



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9046651

Date: JAN. 27, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a sales and marketing officer, seeks second preference immigrant classification as a an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

With the appeal, the Petitioner submits a brief asserting that he is eligible for exceptional ability classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Petitioner argues for the first time on appeal that he “qualifies for visa classification as an advanced degree professional.” To qualify as a member of the professions holding an advanced degree, a petitioner must show that his occupation meets the definition of a profession, and that he holds a qualifying advanced degree. With respect to his occupation meeting the definition of a profession, section 101(a)(32) of the Act does not include sales and marketing officers in the list of professions, and the Petitioner has not established that a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into his occupation.

Additionally, in order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). Here, although the Petitioner contends that he has received the equivalent of a bachelor's degree, he did not submit evidence of this degree. Nor did he provide an academic credential evaluation to establish his degree's equivalency to a U.S. baccalaureate degree as required under 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner also asserts that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner did not fulfill any of the regulatory criteria. On appeal, the Petitioner argues that he meets three criteria: an official academic record showing that he has a degree, diploma, certificate, or similar

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

award relating to the area of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A); membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E); and recognition for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner's appeal brief does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director's determinations for the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F).⁴ Nor does the appeal brief even reference the Director's discussion regarding the aforementioned criteria. Additionally, while the Petitioner claims that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) based on certificates of participation he received for completing training programs hosted by the Sales and Marketing Institute (SMI) and [REDACTED], he did not provide evidence identifying him as member of these organizations. Nor has the Petitioner demonstrated that their membership body is comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that SMI and [REDACTED] otherwise constitute "professional associations." Without offering specific arguments to overcome the Director's findings, the Petitioner has not established that he satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner stated that he intends to continue to work as sales and marketing officer. He indicated that his proposed endeavor involves "conceptualizing, implementing, and overseeing innovative marketing strategies and campaigns - spanning print, TV, online, collateral, and direct mail channels - to drive market impact and expansion for product launch and development as well as brand positioning efforts." The Petitioner further explained that his undertaking includes "developing and implementing effective sales strategies, directing large scale marketing campaigns, and managing personal, trusting client relationships to maximize company profits." The record contains a September 2019 job offer from [REDACTED] offering him "the position of Sales and Marketing Officer."⁵

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of his particular proposed endeavor. The Director indicated that the Petitioner's general

⁴ For example, the Director indicated that the record included a "Certificate of Registration" from [REDACTED] University [REDACTED] College, but that the Petitioner did not submit evidence showing he received a degree or diploma relating to his specialty from that institution.

⁵ This letter listed the Petitioner's job duties as "planning, developing and implementing [an] effective marketing communication campaign as well as . . . promoting products, services and ideas." As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

statements about marketing strategies did not show that his proposed work stands to have broader implications in his field, significant potential to employ U.S. workers, or substantial positive economic effects at a level indicative of national importance.

In his appeal brief, the Petitioner maintains that as a sales and marketing officer, his proposed endeavor has national importance because “marketing is an essential part of growing and maintaining a successful venture.” He states that his proposed sales management work generates revenue for the company, provides better profit margins, helps the company reach its target audience, contributes to building the company’s brand, and boosts the company’s market presence. In addition, the Petitioner contends that his undertaking helps the U.S. economy by “generating direct and indirect jobs,” improves our country’s “standard of living,” and creates “more competitive companies.”⁶

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable sales and marketing services for his U.S. employer and future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his employer and future clientele to impact his field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s sales and marketing projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

⁶ The Petitioner also points to letters of support from former colleagues discussing his knowledge and work experience, but these letters do not explain the national importance of his proposed work under the *Dhanasar*’s first prong. The Petitioner’s knowledge and experience in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.